

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HOUSTON CASUALTY COMPANY, a
foreign insurer,

Plaintiff,

vs.

INSPIRIT ATHLETICS, INC., a Washington
Corporation, d/b/a STERLING ATHLETICS;
JACOB JACKSON, an individual; JOHN DOE
1, an individual; JOHN DOE 2, an individual,
and JANE DOE, an individual,

Defendants.

No.

**COMPLAINT FOR DECLARATORY
RELIEF**

The Plaintiff Houston Casualty Company (“HCC”) by and through their counsel of
record, Ryan J. Hesselgesser and Kara Tredway of Forsberg & Umlauf, P.S., allege as follows:

I. PARTIES

1.1 Plaintiff Houston Casualty Company is incorporated in and has its principal place
of business in Texas.

1.2 Defendant Inspirit Athletics, Inc. d/b/a Sterling Athletics (“Sterling”) is a
Washington Corporation incorporated in the State of Washington with its principal place of
business in Washington.

1 3.3 The complaint further alleges that Jackson was also the head boys' basketball
2 coach for Sumner High School from 2016 to September 2022.

3 3.4 The underlying lawsuit alleges that Jackson first met John Doe 1 in the summer of
4 2017 when John Doe 1 was a minor student athlete and that Jackson began communicating
5 extensively with John Doe 1 through Jackson's Sterling Athletics' cell phone via texting,
6 Snapchat and Instagram.

7 3.5 The Complaint alleges that Jackson continued to communicate with John Doe 1 as
8 John Doe 1 transitioned from middle school to high school. This included provided gifts to John
9 Doe 1 from Sterling Athletics, including free basketball equipment, gear, and custom apparel, as
10 well as basketball shoes and envelopes of cash.

11 3.6 The Complaint further alleges at or around this time, Jackson asked John Doe 1 if
12 he would be interested in working at Sterling Athletics' warehouse to earn extra money and gain
13 experience.

14 3.7 The Underlying Complaint alleges that John Doe 1 accepted the offer and started
15 working in the Sterling Athletics' factory whenever he had availability. John Doe 1 was paid in
16 cash after each shift or issue a check from Sterling Athletics' operating account.

17 3.8 The Underlying Complaint alleges that after John Doe 1 began working at
18 Sterling Athletics, Jackson began messaging John Doe 1 about sexual topics and sending pictures
19 showing Jackson urinating, his abdominal muscles, and his penis.

20 3.9 The Underlying Complaint further alleges that in the Summer of 2020, Jackson
21 invited John Doe 1 over to his home to help with yard work. Eventually this resulted in an
22 incident where Jackson cornered John Doe 1 in his bedroom naked and exposed himself to John
23 Doe 1 while engaging in sexual conduct on himself.

1 3.10 The Complaint further alleges that over the course of the next two years Jackson
 2 continued to reach out to John Doe 1 via social media seeking pictures of John Doe 1's genitalia.
 3 The Underlying Complaint alleges, "John Doe 1 did not want to send Jackson photos of his
 4 genitals, but he also did not want to lose his employment opportunities with Sterling Athletics or
 5 jeopardize his playing time on the High School team."

6 3.11 John Doe 1 alleges that he suffered and continues to suffer extreme emotional
 7 distress, personal anguish, fear, humiliation, pain and suffering as a result of the sexual abuse
 8 perpetrated by Jacob Jackson and the sexual harassment, hostile work environment and gender-
 9 based discrimination he suffered at Sterling Athletics from its Chief Executive Officer.

10 3.12 Defendants John Doe 1, John Doe 2 and Jane Doe assert the following causes of
 11 action against Jacob Jackson: Violation of RCW 9.68A, sexual exploitation of Children, Sexual
 12 Assault, False Imprisonment, Outrage, and violation of RCW 4.24.010- Loss to the Parent Child
 13 Relationship.

14 3.13 Defendants John Doe 1, John Doe 2, and Jane Doe assert the following causes of
 15 action against Sterling Athletics: Violation of RCW 9.68A- sexual exploitation of Children,
 16 Outrage, Sexually Hostile Work Environment and Gender Based Harassment in violation of
 17 RCW 49.60, Gender based Discrimination in violation of Washington's Law Against
 18 Discrimination, Employment Discrimination – Sexual Harassment Quid Pro Quo, Negligence,
 19 and violation of RCW 4.24.010- Loss to the Parent Child Relationship.

20 3.14 John Doe 1 alleges in these causes of action that Sterling Athletics owed a duty of
 21 care to him as an employee, to provide a workplace free of hostility, sexual harassment, and
 22 gender-based harassment.

3.15 John Doe 1 alleges a claim for general and special damages including, but not limited to, emotional distress, physical and mental pain and suffering, medical expenses, lost wages, diminution of his earning capacity, a decrease in his ability to enjoy life, and other general and special damages.

B. Primary Commercial General Liability Policies Issued by HCC

3.16 HCC issued policies of insurance to Sterling under Policy Numbers H18PL30194-00 (eff. 08/23/18 – 08/23/19), H19PL30520-00 (eff. 08/23/19 – 08/23/20), H20PL30632-00 (eff. 08/22/20 – 08/22/21), H21PL30632-01 (eff. 08/22/21 – 08/22/22), and H22PL30632-02 (eff. 08/22/22 – 08/22/23).

3.17 HCC has agreed to defend Sterling and Mr. Jackson subject to a reservation of rights under the Policies.

The policies contained the following relevant provisions.:

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

b. This insurance applies to “bodily injury” and “property damage” only if:

(1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;

(2) The “bodily injury” or “property damage” occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph **1.** of Section **II** – Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

c. “Bodily injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph **1.** of Section **II** – Who Is An Insured or any “employee”

1 authorized by you to give or receive notice of an
 2 “occurrence” or claim, includes any continuation,
 3 change or resumption of that “bodily injury” or
 4 “property damage” after the end of the policy
 5 period.

6 **d.** “Bodily injury” or “property damage” will be
 7 deemed to have been known to have occurred
 8 at the earliest time when any insured listed
 9 under Paragraph 1. of Section II – Who Is An
 10 Insured or any “employee” authorized by you to
 11 give or receive notice of an “occurrence” or
 12 claim:

13 (1) Reports all, or any part, of the “bodily
 14 injury”
 15 or “property damage” to us or any other
 16 insurer;

17 (2) Receives a written or verbal demand or
 18 claim for damages because of the “bodily
 19 injury” or “property damage”; or

20 (3) Becomes aware by any other means that
 21 “bodily injury” or “property damage” has
 22 occurred or has begun to occur.

23 **e.** Damages because of “bodily injury” include
 damages claimed by any person or
 organization for care, loss of services or death
 resulting at any time from the “bodily injury”.

...

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

“Bodily injury” or “property damage” expected
 or intended from the standpoint of the insured.
 This exclusion does not apply to “bodily injury”

resulting from the use of reasonable force to protect persons or property.

...

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury. This exclusion does not apply to liability assumed by the insured under an "insured contract".

...

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

...

q. Distribution Of Material In Violation Of Statutes

“Bodily injury” or “property damage” arising directly or indirectly out of any action or omission that violates or is alleged to violate:

...

- (3)** Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Further, the Policy also includes an Employment-Related Practices Exclusion endorsement (CG 21 47 12 07) further limiting the type of “bodily injury” for which there is coverage:

EMPLOYMENT RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A.** The following exclusion is added to Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

“Bodily injury” to:

- (1)** A person arising out of any:
- (a)** Refusal to employ that person;
 - (b)** Termination of that person’s employment;
or
 - (c)** Employment-related practices, policies, acts or omissions, such as coercion,

demotion, evaluation, reassignment,
discipline, defamation, harassment,
humiliation, discrimination or malicious
prosecution directed at that person; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of “bodily injury” to that person at whom any of the employment related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

SECTION I – COVERAGES

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “personal and advertising injury” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “personal and advertising injury” to which this insurance does not apply. We may, at our

discretion, investigate any offense and settle any claim or “suit” that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

b. This insurance applies to “personal and advertising injury” caused by an offense arising out of your business but only if the offense was committed in the “coverage territory” during the policy period.

The Commercial General Liability Coverage Form (CG 00 01 12 07) also contains the following exclusions under Coverage B:

2. Exclusions

This insurance does not apply to:

a. **Knowing Violation Of Rights Of Another**
“Personal and advertising injury” caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict “personal and advertising injury”.

...

d. **Criminal Acts**

“Personal and advertising injury” arising out of a criminal act committed by or at the direction of the insured.

...

p. Distribution Of Material In Violation Of Statutes
 “Personal and advertising injury” arising directly or indirectly out of any action or omission that violates or is alleged to violate:

...

(3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

As noted above, the Policy includes an Employment-Related Practices Exclusion endorsement (CG 21 47 12 07). This endorsement also limits the type of “personal and advertising injury” for which there may be coverage:

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

...

B. The following exclusion is added to Paragraph 2.,
Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to:

“Personal and advertising injury” to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person’s employment;
 or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of “personal and advertising injury” to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

(1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;

(2) Whether the insured may be liable as an employer or in any other capacity; and

(3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

The following additional provisions of the Commercial General Liability Coverage Form (CG 00 01 12 07) are applicable:

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

...

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers or directors. Your

stockholders are also insureds, but only with respect to their liability as stockholders.

...

2. Each of the following is also an insured:

a. Your “volunteer workers” only while performing duties related to the conduct of your business, or your “employees”, other than either your “executive officers” (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these “employees” or “volunteer workers” are insureds for:

(1) “Bodily injury” or “personal and advertising injury”:

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-“employee” while in the course of his or her employment or performing duties related to the conduct of your business, or to your other “volunteer workers” while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-“employee” or “volunteer worker” as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in

Paragraphs **(1)(a)** or **(b)** above; or
(d) Arising out of his or her
 providing or failing to provide
 professional health care services.

...

SECTION V – DEFINITIONS

...

3. “Bodily injury” means bodily injury, sickness or
 disease sustained by a person, including death
 resulting from any of these at any time.

...

5. “Employee” includes a “leased worker”.
 “Employee” does not include a “temporary
 worker”.

6. “Executive officer” means a person holding any of
 the officer positions created by your charter,
 constitution, by-laws or any other similar governing
 document.

...

10. “Leased worker” means a person leased to you by
 a labor leasing firm under an agreement between
 you and the labor leasing firm, to perform duties
 related to the conduct of your business. “Leased
 worker” does not include a “temporary worker”.

...

13. “Occurrence” means an accident, including
 continuous or repeated exposure to substantially
 the same general harmful conditions.

14. “Personal and advertising injury” means injury,
 including consequential “bodily injury”, arising out
 of one or more of the following offenses:

a. False arrest, detention or imprisonment;

...

e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

...

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

...

DEFINITION OF EMPLOYEE AMENDMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Section V – **Definitions**, 5. "Employee" is deleted and replaced by the following:

5. "Employee" includes "leased worker" and "temporary worker".

Additionally, the 2018-2019 Policy also includes an Amendatory Endorsement pertaining to the definition of "personal and advertising injury." The Endorsement is on form HPC 040 06 03 13 which states:

INTELLECTUAL PROPERTY AMENDMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

I. With respect to the coverage provided by this endorsement, Item **14.** of **SECTION V – DEFINITIONS** is deleted in its entirety and replaced with the following:

14. “Personal and advertising injury” means injury including consequential “bodily injury” arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

...

e. Oral or written publication of material that violates a person’s right of privacy.

Policy H19PL30520-00, with an effective date of August 23, 2019 to August 23, 2020, includes the following additional Endorsement on form CG 21 07 05 14 affecting the available coverage:

**EXCLUSION – ACCESS OR DISCLOSURE OF
CONFIDENTIAL OR
PERSONAL INFORMATION AND DATA-RELATED
LIABILITY –
LIMITED BODILY INJURY EXCEPTION NOT INCLUDED**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Exclusion **2.p.** of **Section 1 – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

2. Exclusions

This insurance does not apply to:

**p. Access or Disclosure of Confidential Or
Personal Information and Data-related
Liability**

Damages arising out of:

- (1)** Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2)** The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

B. The following is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

“Personal and advertising injury” arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing

methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information

Policy H20PL30632-00, with an effective date of August 22, 2020 to August 22, 2021, includes the following additional Endorsement on form HPC 050 33 05 18 which may also affect coverage under the Commercial General Liability Policy:

EXCLUSION – ATHLETIC OR SPORTS PARTICIPANT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to paragraph **2. Exclusions of Section I – Coverage A – Bodily Injury and Property Damage Liability:**

Athletic or Sports Participants

This insurance policy does not apply to any actual or alleged liability arising out of, based upon, or related in any way, either directly or indirectly, to "bodily injury" or "property damage" to any person while:

1. Practicing for;
2. Participating in;
3. Officiating at; or
4. In the course of travel to or from any sport or athletic competition, contest or exhibition sponsored or hosted by any insured.

1 In addition, Policy H20PL30632-00 (eff. 8/22/20-8/22/21) also includes the following
2 Endorsement on form HPC 050 38 06 18 which states:

3
4 **EXCLUSION – PROFESSIONAL SERVICES**

5 This endorsement modifies insurance provided under the
6 following:

7 **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

8 The following exclusion is added to paragraph 2. **Exclusions of**
9 **Section I – Coverage A – Bodily Injury And Property Damage**
10 **Liability** and paragraph 2. **Exclusions of Section I - Coverage B**
11 **– Personal And Advertising Injury:**

12 **Professional Services**

13 This policy does not apply to any actual or alleged “bodily injury”,
14 “property damage”, “personal injury” or “advertising injury”
15 arising out of, or based upon, or related in any way, either directly
16 or indirectly, to the rendering of or failure to render professional
17 services.

18 Professional services include, but are not limited to:

19 ...

- 20 (8) Any service, treatment, advice or instruction relating to
21 physical fitness, including service, treatment, advice or
22 instruction in connection with diet, cardiovascular fitness,
23 bodybuilding or physical training programs;

...
This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the accident which caused the “injury or damage”, involved the rendering of or failure to render professional services.

Policy H20PL30632-00 (eff. 8/22/20-8/22/21) also includes the Manufacturers “Core 25” Coverage Enhancement Package Endorsement on form HPC 040 44 05 18. This Endorsement states:

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed that this endorsement amends the COMMERCIAL GENERAL LIABILITY COVERAGE PART. The changes this endorsement makes do not apply with respect to any coverage that has been excluded or amended by another endorsement attached to this policy.

...

SECTION I – COVERAGE AMENDMENTS

1. Expected or Intended Injury

Under **SECTION I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, paragraph **2. Exclusions** is amended to delete exclusion **a. Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

- a. Expected or Intended Injury**
“Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” or “property damage” resulting from the use of reasonable force to protect persons or property

...

SECTION II – WHO IS AN INSURED AMENDMENTS

8. Co-Employees

Under **SECTION II – WHO IS AN INSURED**, the following language is added to paragraph **2.a.1**:

Paragraph (a) and (b) do not apply to “bodily injury” or “personal and advertising injury” caused by a co-“employee” while in the course of his or her employment or performing duties related to the conduct of your business. This includes, but is not limited to, injury caused by a co-“employee” in his or her capacity as a supervisor based upon responsibilities to supervise other “employees” as assigned by you. However, none of these employees are insureds for “bodily injury” or “personal and advertising injury” arising out of their willful conduct, defined to include the purposeful or willful intent to cause such injury.

...

SECTION V – DEFINITIONS AMENDMENTS

21. Definition of Bodily Injury

Under **SECTION V – DEFINITIONS**, Definition **3.** is deleted and replaced by the following:

- 3. “Bodily injury”** means bodily injury, sickness, or disease sustained by a person, including the death of a person. “Bodily injury” also means mental anguish, mental injury, or shock, if directly resulting from physical injury, sickness, or disease to that person.

...

24. Definition of Personal and Advertising Injury

Under **SECTION V – DEFINITIONS**, Definition **14.**, is amended by the addition of paragraph **h.**, which reads as follows:

- h.** discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:
- (1)** not done intentionally or at the direction of;

(a) an insured;

(b) any “executive officer,” director, stockholder, partner or member of the insured; and

(4) not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.

C. Commercial Excess Policies

3.18 HCC also issued Commercial Excess Liability Policies to Sterling as follows: H18PX50098-00 (eff. 08/23/18 – 08/23/19); H19PX50267-00 (eff. 08/23/19 – 08/23/20); H20PX50360-00 (eff. 08/20/20 – 08/22/21); H21PX50360-01 (eff. 08/22/21 – 08/22/22); and H22PX50360-02 (eff. 08/22/22 – 08/22/23).

3.19 The Commercial Excess Liability Policies contain the following relevant provisions:

SECTION I – Excess Liability Insurance

1. Insuring Agreement

a. We will pay those sums in excess of the limits shown in ITEM 7 of the Declarations, Schedule of Underlying Insurance, that you become legally obligated to pay as damages because of “injury or damage” to which this policy applies, provided that the “underlying insurance” also applies, or would apply but for the exhaustion of its applicable limits of insurance.

b. This policy is subject to the same terms, conditions, agreements, exclusions and definitions as the “underlying insurance”, except:

- i. We will have no obligation under this policy with respect to any claim or “suit” that is settled without our written consent;
- ii. With respect to any provisions to the contrary contained in this policy; and
- iii. Under no circumstances will the coverage available under this policy be broader than any “underlying insurance”.

...

SECTION II – Exclusions

The exclusions applicable to the “underlying insurance” also apply to this policy. In addition, this policy does not apply to:

...

8. Employment-Related Practices

Any actual or alleged liability arising out of, based upon, or related in any way, either directly or indirectly, to:

...

- a. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- b. The spouse, child, parent, brother or sister of any person as a consequence of “injury or damage” to that person to whom any of the employment-related practices described in

Paragraphs **a.**, **b.** or **c.** above is directed.

This exclusion applies:

- a.** Whether the injury-causing event described in Paragraphs **a.**, **b.** or **c.** above occurs before employment, during employment or after employment of that person;
- b.** Whether the insured may be liable as an employer or in any other capacity; and
- c.** To any obligation to share damages with or repay someone else who must pay damages because of the injury.

...

SECTION V – Definitions

The definitions applicable to the “underlying insurance” also apply to this policy, except that the following definitions control the defined terms in this policy:

...

- 5.** “Injury or damage” means any injury or damage covered under the applicable “underlying insurance” arising from an occurrence, offense, accident, act, error or omission or other event to which the “underlying insurance” applies.

IV. CAUSE OF ACTION

A. Declaratory Relief: No Duty to Defend or Indemnify

4.1 Plaintiff reasserts and re-alleges the allegations in each of the foregoing paragraphs as fully set forth herein.

4.2 Sterling and Mr. Jackson seek coverage under certain policies issued by HCC for damages alleged in the Underlying Lawsuit.

1 4.3 There is an actual and justiciable controversy between Plaintiff and Defendants
2 with respect to whether the General Liability Policies provide coverage for the claims asserted in
3 the Underlying Lawsuit.

4 4.4 There is an actual and justiciable controversy between Plaintiff and Defendants
5 with respect to whether the Excess Policies provide coverage for the claims asserted in the
6 Underlying Lawsuit.

7 4.5 In accordance with the insuring agreement, provisions, terms, conditions,
8 exclusions, and endorsements of the General Liability Policy and Excess Policy, HCC has no
9 duty to defend or indemnify Defendants Sterling Athletics or Mr. Jackson under the Policies or
10 applicable law, in whole or in part, for the following reasons:

- 11 a. No coverage is afforded for the Underlying Lawsuit to the extent Mr. Jackson's
12 and/or Sterling Athletics' accts or omissions alleged by Underlying Plaintiffs do
13 not constitute an "occurrence" under the Policies.
- 14 b. No coverage is afforded for the Underlying Lawsuit to the extent Underlying
15 Plaintiff's alleged injuries are not "Bodily injury" as that term is defined in the
16 Policies.
- 17 c. No coverage is afforded for the Underlying Lawsuit for criminal or intentional
18 actions of Mr. Jackson or Sterling Athletics.
- 19 d. No coverage is afforded for the Underlying Lawsuit as the Policies exclude
20 coverage for "Bodily injury" to an "employee" of Sterling Athletics, arising out of
21 and in the course of employment or performing duties related to the conduct of
22 Sterling's business and further exclude "bodily injury" to the parent of such
23 employee.

e. No coverage is afforded for the Underlying lawsuit, as the Policies exclude “Bodily injury” arising out of employment -related practices, policies, acts or omissions.

f. No coverage is afforded for “bodily injury” or “personal and advertising injury” caused by a co-“employee” while in the course of his or her employment or performing duties related to the conduct of Sterling’s business.

g. Mr. Jackson is not an insured for “bodily injury” or “personal and advertising injury” arising out of his willful conduct, defined to include the purposeful or willful intent to cause such injury.

h. There is no coverage for intentional discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

i. There is no coverage for “personal and advertising injury” arising out of any access to or disclosure of any person’s confidential or personal information.

4.6 Plaintiff also relies upon all additional terms, definitions, exclusions, conditions and endorsements in the Policies not specifically identified herein that potentially limit or preclude coverage to Defendants under the Policies for the Underlying Lawsuit.

4.7 Plaintiff seeks a declaration that its policies do not provide defense or indemnity for the claims made against Sterling and Jackson in the Underlying Lawsuit.

V. PRAYER FOR RELIEF

WHEREFORE, HCC prays for judgment against Defendants as follows:

5.1 That the Court determine, decree, and adjudge that HCC is entitled to a declaration that it has no duty to defend Sterling or Mr. Jackson in the Underlying Lawsuit under the General Liability and Umbrella Policies.

